

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

SHERIAN SMITHY

PLAINTIFF

V.

CIVIL ACTION NO.: 1:17cv205-GHD-DAS

**THE KROGER CO., INC.,
And THOMPSON SQUARE, LLC**

DEFENDANTS

NOTICE OF REMOVAL

COME NOW, through undersigned counsel, Thompson Square, LLC, defendant in the above-captioned matter, and pursuant to 28 U.S.C. § 1446, with full reservation of all defenses, objections and rights, give notice of removal of this suit from the Circuit Court of Lee County, State of Louisiana, to the United States District Court for the Northern District of Mississippi, Aberdeen Division, for the reasons set forth below:

1.

This action was commenced on or about October 24, 2017, by the filing of an original Complaint by Sherian Smithy, in the Circuit Court of Lee County, Mississippi, Docket No. CV 17 – 101(G) L, in which The Kroger Co., Inc., and Thompson Square, LLC, were named as defendants. The original Complaint was filed on October 24, 2017, and summons and a copy of the original Complaint were served on November 6, 2017 on defendant, Thompson Square, LLC. Upon information and believe, The Kroger Co., Inc., was also served on November 6, 2017. The Defendants that have been served have not yet filed Answers to the original Complaint. A copy of the original Complaint served upon Defendants is filed herewith. (See Exhibit “A”).

2.

The action, which is pending in State Court, is of a civil nature and was brought by Sherian Smithy, seeking damages for personal injuries allegedly sustained in a parking lot alleged controlled by defendants.

3.

The above entitled cause is a civil action which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441 as this court has original jurisdiction of this claim under 28 U.S.C. § 1332 “Diversity of Citizenship” in that:

- (a) According to the plaintiff’s well pleaded complaint, Plaintiff Sherian Smithy, is a resident of and domiciled in the State of Mississippi;
- (b) According to the plaintiff’s well pleaded complaint, Defendant, The Kroger Co., Inc., is a resident of the State of Ohio organized and existing in the State of Ohio. The Kroger Co., Inc., consents to removal and is expected to file a joinder to removal;
- (c) Thompson Square, LLC, is a resident of its members which consists of the following (See Exhibit “B”):
 - 1. G. Marshall Hart, Jr., is a citizen and resident of the State of Tennessee;
 - 2. Scott W. Pray is a citizen and resident of the State of Massachusetts;
 - 3. William M. Lybrook, IV, is a citizen and resident of the State of Georgia;
 - 4. Steven B. Pierce is a citizen and resident of the State of Tennessee;
- (d) Defendants have reason to believe that the captioned and numbered cause is a civil action wherein the matter in controversy exceeds the sum or value of

\$75,000.00, exclusive of interest and costs, as the Plaintiff has specifically alleged damages in excess of \$75,000.00 exclusive of interest and costs.

4.

Plaintiff's claim is a cause removable from the State Court to the District Court of the United States under the terms of 28 U.S.C. § 1441 in that it is a civil action wherein the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs and is between citizens of different states. Moreover, the Petition for Damages seeks a money judgment in excess of \$75,000.00 exclusive of interest and costs.

5.

The United States District Court for the Northern District of Mississippi, Aberdeen Division, encompasses the district and division where the State Court action is now pending.

8.

Attached hereto and filed herewith is a copy of all process, pleadings and orders served in this action.

9.

Promptly after filing of this Notice of Removal, written notice thereof will be given to Plaintiff and a copy of this Notice of Removal will be filed with the Clerk of Court of the Circuit Court of Lee County, Mississippi, as provided by law.

10.

This Notice of Removal is being filed in this Court within thirty days of service of the Petition on Defendants. Thus, Defendants herein maintain that the time within which to file this Notice of Removal in order to properly remove this case to this Honorable Court has not yet expired.

11.

Based on the foregoing, Thompson Square, LLC, respectfully removes the entitled case to this Honorable Court and respectfully submits that removal is proper.

WHEREFORE, premises considered, Thompson Square, LLC, prays that the captioned and numbered cause, pending in the Circuit Court for Lee County, State of Mississippi, be removed therefrom and to the Honorable United States District Court in and for the Northern District of Mississippi, as provided by law; that this Court enter such orders and issue such process as may be proper to bring before it copies of all records and proceedings in the aforementioned State Court suit, and thereupon proceed with this suit as if it had originally commenced in this Court.

Respectfully Submitted

LAW OFFICES OF JULIE E. VAICIUS

/s/ Philip G. Smith

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Thompson Square, LLC

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing Notice of Removal from State Court has been served upon the following persons by United States mail, postage prepaid, facsimile, electronic mail and/or hand delivery on the 5th day of December, 2017, at the post office addresses shown:

MS. Camille Roberts
Clerk of Court
Lee County Circuit Court, Mississippi
P.O. Box 762
Tupelo, MS 38802
Phone: 662-841-9024
Fax: 662-680-6079

Mr. J. Mark Shelton, Esq.

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/s/ Philip G. Smith
